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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,997	02/02/2004	Claus Riehle	PO-8010/LeA 36,342	2148
157	7590	10/18/2006	EXAMINER	
BAYER MATERIAL SCIENCE LLC			SUNG, CHRISTINE	
100 BAYER ROAD			ART UNIT	
PITTSBURGH, PA 15205			PAPER NUMBER	
			2884	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/769,997		RIEHLE ET AL.	
	Examiner		Art Unit	
	Christine Sung		2884	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The amendment filed on August 8, 2006 has been accepted and entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being obvious over Meeuwssen (US Pre Grant Publication 2004/0249512 A1).

The applied reference has a common assignee and a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which

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corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Regarding claim 1, Meeuwssen discloses a process for monitoring and/or controlling at least one nitration process (claim 1 and paragraph [0002]) comprising:

a) measuring spectrometrically an online composition of a component of a nitration reaction mixture (paragraph [0011]),

b) relaying data from a) to a process control system in order to monitor and control the production process (paragraph [0012] and [0014]).

Meeuwssen does not explicitly state that the component is an acid phase element of the nitration process, it would be obvious to one having ordinary skill in the art to adapt the general nitration monitoring as disclosed by Meeuwssen with the particular acid phase element, dependent upon the type of nitration process being monitored.

Regarding claims 2-3 Meeuwssen discloses using an NIR spectrometer (claim 5).

Regarding 4, Meeuwssen discloses a measuring cell for spectrometric measurement (Figure 1a, element 29).

Regarding claims 5-6, Meeuwssen discloses that the data are based on the spectrometric online measurement and evaluation with a matrix specific calibration model (paragraph [0026]).

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Regarding claim 7, Meeuwssen discloses that a first supply of component is monitored and controlled after spectrometric examination (figure 1a, element 30) and a second supply of component is monitored and controlled after spectrometric examiner (Figure 1a, element 23).

Regarding claims 8-9, Meeuwssen discloses that the spectrometer is connected to several measuring points and is operated in multiplex mode in one nitration unit (paragraph [0001]).

Regarding claim 10, Meeuwssen discloses a product capable of automatically implementing the steps of:

a) evaluating data obtained by a spectrometric examination of an component after nitration to determine the content of the component (paragraph [0011]), and

b) relaying the component content from a) to a regulator to control metering of the component to a nitration reaction mixture (paragraph [0012] and [0014]).

Meeuwssen does not explicitly state that the component is an acid phase element of the nitration process, it would be obvious to one having ordinary skill in the art to adapt the general nitration monitoring as disclosed by Meeuwssen with the particular acid phase element, dependent upon the type of nitration process being monitored.

Regarding claim 11, Meeuwssen discloses having a matrix-specific calibration model for evaluating the nitric acid content (paragraph [0026]).

Regarding claim 12, Meeuwssen discloses that the product is designed for automated regulation (paragraph [0026]).

Regarding claim 13, Meeuwssen discloses a facility for monitoring and/or controlling a nitrating process comprising:

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a) means for spectrometric examination of an acid phase after a nitration (paragraph [0011]),

b) regulating means for metering component into at least one nitrating reactor, the regulating means being designed to regulate metering of nitric acid on the basis of the spectrometric examination (paragraph [0012] and [0014]).

Regarding claims 14-15, Meeuwssen discloses that the spectrometric examination comprising an NIR spectrometer (claim 5).

Regarding claim 16, Meeuwssen discloses a measuring cell for spectrometric measurement (Figure 1a, element 29).

Regarding claim 17, Meeuwssen discloses that the data are based on the spectrometric online measurement and evaluation with a matrix specific calibration model (paragraph [0026]).

Regarding claims 18 and 21-22, Meeuwssen discloses that the spectrometric measurement comprises an IR spectrometer (claim 5) with electronic evaluating unit (element 6), and the IR spectrometer is connected to several measuring points for spectrometric examination of the acid phase after nitration and IR spectrometer is designed for multiplex operation (paragraph [0001]).

Regarding claims 19 and 23-24 Meeuwssen discloses having a process control system (element 28) for the regulating means and a connection of the means for spectrometric examination to the process control system (element 3 is connected to element 28).

Regarding claim 20, Meeuwssen discloses that the data are based on the spectrometric online measurement and evaluation with a matrix specific calibration model (paragraph [0026]).

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Response to Arguments

5. Applicant's arguments, filed August 8, 2006 with respect to the rejection(s) of claim(s) 1-24 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Meeuwssen.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine Sung whose telephone number is 571-272-2448. The examiner can normally be reached on Monday- Friday 9-5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on 571-272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christine Sung

Examiner

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OTILIA GABOR
PRIMARY EXAMINER